TO BE OR NOT TO BE?
AN EMPIRICAL STUDY ON DUAL-CLASS SHARE STRUCTURE OF US LISTED CHINESE COMPANIES

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INTRODUCTION

China (Mainland China) has experienced over three decades economic flourish, and has become the second largest economy. During the period of development, China transplanted and localized the experience of leading economic forces worldwide. As two significant economies, the British (hereinafter "the UK") and the American (hereinafter "the US") commercial practices are similar and converging in many senses, which are both mirrored greatly by China. However, with regard to takeover regulation, in particular, the application of takeover defenses, the US and the UK diverge from each other drastically, which empowers the employment of post-bid anti-takeover tactics to directors and shareholders respectively; towards pre-bid takeover defenses, especially, the adoption of dual-class share structure (DCSS), the US and the UK also hold diametrical attitudes. At the crossroad, China chose the British framework of takeover regulation as its mold, banning the application of DCSS with the one share, one vote (OSOV) principle clearly written in both its company laws and listing rules.[1] This choice may be partly attributed to the fact that when devising the framework of takeover regulation, China referred the Hong Kong mode greatly, and thus indirectly reflected the British mode of takeover regulation. More importantly, hostile takeovers were rare in China, and it did not take hostile takeovers into consideration when making the laws.

The 2008 global financial crisis brought about financial ravage and detrimental domino effect worldwide. In order to revive the slowing economy through injecting liquidity, in response, China adopted a number of financial policies, which released abundant capital, and a great proportion of which flowed into the field of takeover eventually. Consequently, there are emerging trends that hostile takeovers are booming while corresponding regulations are incompetent.[2] Rather than the lagging regulatory reaction, commercial entities reacted quickly

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[1] "Shareholders attend the general meeting of shareholders; one share carries one vote." COMPANIES LAW OF PEOPLE'S REPUBLIC OF CHINA 2014 art. 103 [hereinafter (CLOC 2014)]. *See also* CHINA SEC. REG. COMMISSION, *Guide to the Articles of Association of Listed Companies 2014*, art. 78 "Shareholders conduct their voting rights according to their shareholding on the one share, one vote basis."

[2] This status is clearly reflected by the usage of leverage capital and the ineffectiveness of the tactic of poison pills in the ongoing takeover battle between Baoneng and Vanke, which may be the most spotlight-catching Chinese takeover event. In this takeover battle, the target company named Vanke is a Chinese company listing on the Shenzhen Stock Exchange which is ranked 1st in the field of real estate worldwide with a net profit of about USD $ 5 billion in 2015. Before the takeover battle, a state-owned company named Huarun Group was the largest

to seek safe harbor. Those American stock exchanges became attractive to Chinese companies due to their tolerance of takeover defenses, in particular, DCSS. To seek the soft regulation with the issuance of multiple voting shares, dozens of Chinese companies chose the American stock exchanges as their initial public offering (IPO) venues. Until June 30 2016, there are 150 Mainland Chinese (Chinese) companies listed on the US stock markets, of which approximately three-tenths employ DCSS. It seems that there is a great desire for DCSS among Chinese listed companies.

In this paper, the authors aim to discuss the feasibility of adopting DCSS in China in an empirical perspective. The remainder of this paper is constructed as follows: in Part One, the authors will search out the financial and regulatory factors, which lead to the emerging hostile takeover boom in China. Part Two will be an overview of the US listed Chinese companies with DCSS and other takeover defenses. In Part Three, the authors will analyze the functionality and corporate performance of the US listed Chinese companies with DCSS. Part Four will analyze the limitations and restrictions on the application of DCSS on the US stock exchanges and corresponding implications on the Chinese framework of takeover regulation. Concluding remarks are the subject of Part Five. As to the range of data to be covered, only those companies listed after 2011 will be sampled in this paper due to the consideration that some of the data of the Chinese companies on NYSE or NASDAQ listed prior to 2011, were not available or were inaccurate; counting them leads to misleading results. Furthermore, the data is dated for such a changing area of law. In order to reflect the up-to-date status accurately, this paper focuses its empirical study on data dating back to 2011.

I. The Emerging Trend of Hostile Takeover Boom in China

The Emerging hostile takeover boom in China may be a combined outcome of diverse causes, and it is extremely difficult to figure out all the financial, regulatory and corporate factors which may lead to a hostile takeover on a case-by-case basis. However, the recent amendments of some financial policies and legislation in China have been facilitating hostile takeovers in the general sense. On the one hand, they enable a bidder to raise leverage capital more easily to launch a hostile takeover; on the other, they make takeover regulation increasingly difficult.

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shareholder of Vanke with 14.89% of outstanding shares, while the founder Shi Wang held less than 1% of shareholding. From July 2015, Baoneng began to purchase dispersed shares on the stock exchange and achieved the shareholding of 5% and 10% on July 11, 2015 and July 25, 2015 respectively. Baoneng succeeded Huarun to become the largest shareholder on August 26, 2015 with a shareholding of 15.04%, and subsequently improved this figure to 24.26% on December 11, 2015. From December 18, 2015, Vanke suspended its shares on board of the stock exchanges. After this suspension was withdrawn on July 4, 2016, Baoneng continued to buy Vanke's shares and increased its shareholding to about 25.4%. These transactions jointly cost Baoneng over RMB ¥ 46 billion. However, it is estimated that Baoneng paid just RMB ¥ 10 billion himself, while the other ¥ 36 billion was either raised through pledging the purchased Vanke's shares to banks or was leveraged from fund companies. On June 17, 2016, the board of Vanke declared that due to a board decision which was approved by two-thirds of the directors, Vanke would issue new shares (poison pills) exclusively to Shenzhen Metro Group (as a white knight) for buying its assets. Such a resolution was opposed by both Huarun and Baoneng, whose shareholding will be diluted to 12.10% and 19.27% if the cooperation between Vanke and Shenzhen Metro Group is carried out, while Shenzhen Metro Group will become the largest shareholder with 20.65% of shareholding. To date, there is no final outcome of this takeover battle. *See* Vanke, Annual Report (Form 10-K) (2015).

Raising Takeover Capital is Becoming Easier

Hostile takeovers are commonly launched by a bidder who purchases a great number of dispersed shares on the stock market at a higher price, and leveraged capital always provides plenty of funds for such transactions. A number of recently revised financial policies and legislation in China have released abundant funds, which have been serving as leverage capital to facilitate hostile takeovers.

Primarily, commercial banks are permitted to use more funds as loans. In order to revive the slowing economy through injecting liquidity, People's Bank of China (PBOC) has cut the benchmark interest rate of loan and deposit reserve ratio[3] five times since 2015, reducing the former from 5.6% to 4.35%[4] and the latter from 20% to 17%.[5] It is estimated that each 0.5% of deposit reserve equals approximately RMB ¥ 685 billion,[6] thus 3% represents over RMB ¥ 4,000 billion. Not only do lower interest rates lessen the loan burden of raising capital, but also the released funds enable commercial banks to provide more takeover loans.

Moreover, PBOC removed the ceiling for deposit interest rates on October 23, 2015 and permitted commercial banks as well as rural cooperative financial institutions to set this rate freely.[7] This means that the above-mentioned institutions could price their financial products to raise deposits; as a result, more raised deposits will flow into the field of takeover loans eventually.

Furthermore, the detailed implementation of financial policies promoted the hostile takeover boom as well. In 2015, the China Banking Regulatory Commission (CBRC) revised the percentage restriction on loans that commercial banks could provide for takeovers, increasing the cap from 50% in 2008 to 60% in 2015; in the meantime, the maximum term of takeover loans were prolonged from 5 years to 7 years.[8] Moreover, the scope that such loans could cover was extended to include all the costs of a takeover. It is broader than the 2008 stipulation which merely comprised transaction fees.[9] In addition, more commercial banks are

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3 *See* The Economic Times, Definition of "Reserve Ratio" http://economictimes.indiatimes.com/definition/reserve-ratio (last visited May 18, 2017). Deposit reserve ratio is a central bank regulation employed by most of the world's central banks, which sets the minimum percentage of customer deposits that each commercial bank must hold as reserve rather than lend out.

4 These figures are the benchmark interest rate of one-year's loan. *See generally* BLACKMERGER, http://www.blackmerger.com/#!peoples-bank-of-china/c1e91 (last visited May 18, 2017).

5 These figures are the deposit reserve ratio for large financial organisations. *See generally* Michael Cole, *Will China's latest rate cuts rekindle real estate investment?*, MINGTIANDI (Oct. 24, 2015), http://www.mingtiandi.com/real-estate/china-real-estate-research-policy/will-chinas-latest-rate-cuts-rekindle-the-real-estate-industry.

6 *See* Enda Curran & Kevin Hamlin, *China Cuts Banks' Reserve Requirement Ratio*, BLOOMBERG (Feb. 29, 2016), http://www.bloomberg.com/news/articles/2016-02-29/china-cuts-reserve-ratio-in-latest-step-to-support-growth.

7 *See* Chen Jia, *Economists: Interest reforms let market decide*, PEOPLE'S REPUBLIC OF CHINA, THE STATE COUNCIL (Oct. 26, 2015), http://english.gov.cn/policies/policy_watch/2015/10/26/content_281475220321273.htm.

8 *See* Guideline 2008, art. 18. "Takeover loan should not provide more than 50% of the total takeover capital. Guideline 2008, art. 19. "The term of takeover loan should be no longer than 5 years in general. Such stipulations expired and were substituted by Guideline 2015, art. 21." "Takeover loan should not provide more than 60% of the total takeover capital." Guideline 2015, art. 22. "The term of takeover loan should be no longer than 7 years in general."

9 *See* Guideline 2008, art 4. "Takeover loan means the loan that commercial bank provides to a bidder or his subsidiary for paying the cost of takeover transaction." *See* Guideline 2015, art. 4. "Takeover loan means the loan

permitted to conduct their business in the area of takeover loans due to the lowered threshold.[10] This means that when looking for takeover capital, a bidder has more options than ever before.

Even though the above-discussed financial policies and legislation were revised with the purpose of encouraging investments rather than facilitating hostile takeovers, the higher percentage of loans, less interest burden, longer loan term and more choices jointly result in a financial scheme that makes it easier for a bidder to raise leverage capital. Correspondingly, the threshold of launching a hostile takeover is lowering in China.

Takeover Regulation is Becoming More Difficult

The incompetence of Chinese takeover regulation, in particular, the poor identification of persons acting in concert contributes to the boom of hostile takeover as well. The recently established financial policy, i.e. the Pilot Program of an Interconnection Mechanism for Transactions on the Shanghai and Hong Kong Stock Markets, made this weakness even worse.[11]

Under the takeover regulatory framework in China, where a bidder individually or collectively holds 5% or above of the total outstanding shares of a target company, they should, within three days of this occurrence, submit a written report to both CSRC and the stock exchange on which the target company is listed, notify the target company and make a public announcement about their shareholding. Within this three day term, the bidder and persons acting in concert with him are prohibited from buying or selling shares of the target company.[12] Moreover, after obtaining 5% or more of shareholding, the bidder and persons acting in concert shall obey an obligation of disclosure each time when their shareholding of the target company increases or declines 5%.[13] Such stipulations are promulgated on the grounds that takeovers should be conducted under supervision and regulation. Furthermore, compulsory disclosure could attract other investors to purchase the shares of the target company, and thus it could enhance share price to increase takeover cost.[14] Moreover, such requirements enable a target company to realize the shareholding of a bidder in a timely manner and to decide whether and how to take defenses.

It is relatively easy for CSRC to monitor and regulate a takeover launched by a single bidder. However, where a takeover is initiated by persons acting in concert, in particular, a hostile takeover of which the bidders do not wish to disclose their takeover collusion; it is sometimes complicated to identify these persons acting in concert. To solve this problem, CSRC lists 11 specific circumstances and an open-ended provision with regard to the presumption of persons acting in concert, which mainly concentrate on relative relationship,

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that commercial bank provides to a bidder or his subsidiary for paying the cost of takeover transaction and other fees generated during the takeover."

[10] Guideline 2015 cancelled two requirements that existed in Guideline 2008 on the commercial banks which are permitted to provide takeover loan, as follow: 10% or above of Capital Adequacy Ratio and 1% or above of Reserve Balance.

[11] Moreover, the replica of this Pilot Program, i.e. the Shenzhen – Hong Kong stock connect program has been approved by the State Council, and is proposed to carry out on December 5, 2016.

[12] Securities Law of People's Republic of China, GENERAL PROVISIONS, art. 86, 2014. The same statement is also stipulated in CSRC, Measures for Regulating Takeover of Listed Companies 2014, Article 13 (1) [hereinafter (*Measures 2014*)].

[13] *Measures 2014*, art. 13.

[14] Wei Cai, *Hostile Takeover and Takeover Defences in China,* 42 HONG KONG L. J. 901, 933.

cross-shareholding and cross-employment.[15] Nonetheless, such stipulations are far from enough, since it is sometimes hard to verify persons acting in concert when they do not disclose their relationship actively.

The Pilot Program of an Interconnection Mechanism for Transactions on the Shanghai and Hong Kong Stock Markets, which was enacted on October 17, 2014, may aggravate the difficulty of takeover regulation even further. In the light of this Program, investors in China could purchase shares of some specific listed companies on the Hong Kong Stock Exchange via the Shanghai Stock Exchange, and *vice versa.*[16] It means that where a person wishes to launch a hostile takeover and to veil the obligation of disclosure, not only could he seek potential persons acting in concert in China, but also he could look for alliances in Hong Kong so that his confederates could purchase shares of the target company via the Hong Kong Stock Exchange to conceal this takeover collusion. Although CSRC and the Hong Kong Securities Regulation Commission endorsed a memorandum and declared that they would conduct effective takeover regulation together, no framework of the identification of persons acting in concert has been established yet. As a result, it will be more difficult for CSRC to conduct takeover regulation, as well as for a target company to adopt post-bid defenses properly since they do not know the actual shareholding of a bidder.

Hostile takeovers are flourishing while official regulation does not keep the pace. On these grounds, permitting companies to adopt more takeover defenses autonomously is a feasible solution to this dilemma. Under the present circumstance of DCSS being banned in China, many Chinese companies went public in the US to issue multiple voting shares.

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[15] *Measures 2014*, art. 83: Where there is no proof to the contrary, investors who take over a listed company will be presumed as persons acting in concert when any of the following circumstances is achieved: (a) one or more investors have controlling interests over the other investors; (b) the investors are controlled by the same person; (c) the chief members of directors, supervisors and executives of one investor serve as the directors, supervisors and executives of another investor simultaneously; (d) one investor holds shares of another investor, and could influence his major decisions; (e) any legal person, institution or natural person provides financing arrangement for the investors with regard to a takeover; (f) partnership, cooperation, joint venture or any other economic relationship exists among the investors; (g) an investor and a natural person who owns 30% or more shares of this investor hold shares of the same listed company; (h) an investor and his directors, supervisors or executives hold shares of the same listed company; (i) a natural person who owns 30% or more shares of one investor and any of the persons (comprising but not limiting to directors, supervisors, executives and their parents, spouses, offspring as well as their offspring's spouses, parents and siblings of their offspring's spouses, etc.) collectively with this investor hold shares of the same listed company; (j) directors, supervisors, executives of a listed company and those relatives stated in (i) hold shares of their company simultaneously or indirectly hold shares of their company simultaneously through undertakings controlled by them or their relatives; (k) directors, supervisors, executives and staff hold shares of their company with legal persons or other institutions they control or entrust; (l) other connections exist among the investors.

[16] *See* REUTERS NEWS, *Update China to allow cross-border investment between Hong Kong, Shanghai stock markets* (Apr. 10, 2014), http://www.reuters.com/article/china-crossborder-idUSL3N0N21MY20140410.

II. An Overview of the US Listed Chinese Companies with Dual-class Share Structure and Other Takeover Defenses

The US Listed Chinese Companies with Dual-class Share Structure

Currently, there are 150 Chinese companies [17] listed on the American stock exchanges, including 63 companies on NYSE, 85 companies on NASDAQ and 2 companies on AMEX. Of the 150 companies, 45 were listed after 2011; one corporation named Wins Finance Holdings Inc. (symbol: WINS), which was listed on NASDAQ in 2015, should be excluded from the sample since it achieved US listing via the merger with a shell company rather than IPO.[18] Therefore, the sampled subject to be analyzed in this part is 44 companies, which were listed on the American stock exchanges from January 1, 2011 to June 30, 2016.

Among these 44 companies, 24 issued dual-class shares during their IPOs, [19] including 13 on NYSE while the other 11 on NASDAQ.[20] Furthermore, one company, Xunlei Limited (symbol: XNET), proposed to adopt DCSS according to its prospectus but eventually employed the OSOV principle during its IPO in 2014.[21] Moreover, two companies used DCSS, but had been delisted.[22]

It seems that DCSS and the OSOV principle enjoy a similar popularity since the number of the US listed Chinese companies with DCSS prevails over their counterparts with single-class share structure (SCSS) slightly. However, compared with the UK contemporarily, of which only 3 out of the 29 US listed British companies issued multiple voting shares,[23] DCSS seems to be more attractive to the US listed Chinese companies (see Figure 1).

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[17] Companies headquartered in China that raised capital through issuing ordinary shares (or depositary receipts over ordinary shares) by primary listing on the American stock exchanges are counted. Companies which are also listed in Hong Kong or China are not included as well as those that were delisted or suspended as of June 30, 2016. This criterion is applicable afterwards unless specified. *See generally* NASDAQ.com.

[18] *See generally* Wins Finance Holdings Inc. Prospectuses, communications, business combinations, http://winsholdings.com.

[19] *See generally* SEC, *Company Filings, Prospectuses & Annual Reports* (June 30, 2016), https://www.sec.gov/edgar.shtml.

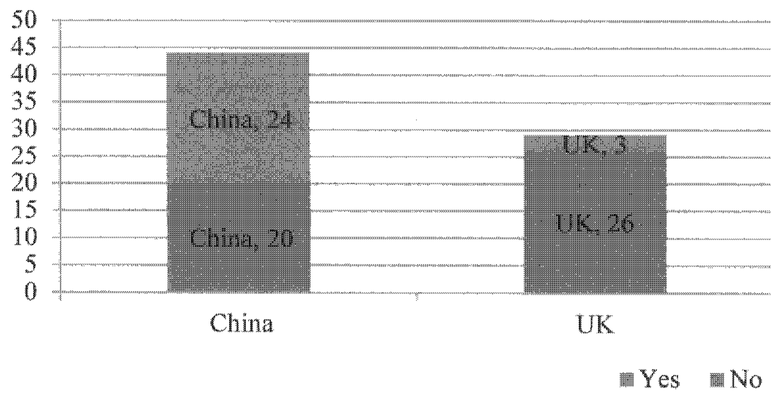
[20] *See infra* Appendix I. Detailed information of the 24 US listed Chinese companies with DCSS.

[21] According to Xunlei Ltd's initial prospectuses as of June 8, 2011, its shares would be divided into Class A shares with one vote per share and Class B shares with ten votes per share. However, pursuant to its revised edition of prospectuses as of June 12, 2014, Xunlei Ltd chose one share, one vote framework eventually. *See Company Filings, Prospectuses & Annual Report*, *supra* note 19.

[22] The two companies are Sungy Mobile (symbol: GOMO) and Youku Tudou (symbol: YOKU), which were listed on NASDAQ in 2013 and NYSE in 2012 respectively. GOMO was delisted in 2015 due to the going-private transaction between the major shareholders and small shareholders; while YOKU was delisted in 2016 on the basis of the acquisition by BABA. These two companies are not counted into the 24 companies with DCSS.

[23] *See* NASDAQ.com. *See also Company Filings, Prospectuses & Annual Report*, *supra* note 19.

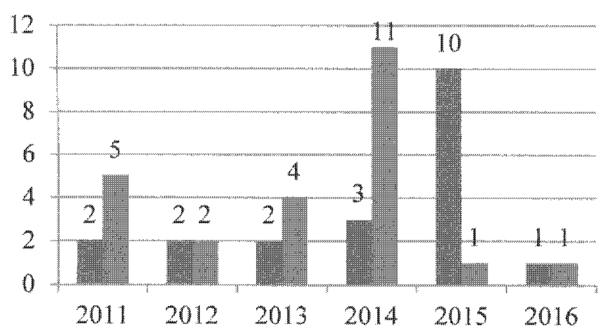
Figure 1: Comparison between China and the UK in terms of the Application of Dual-class Share Structure on the American Stock Exchanges from January 1, 2011 to June 30, 2016



US Listed Companies with Dual-Class Share Structure
*Figure drawn up by the authors. Sources: NASDAQ and SEC.

There is no clear tendency towards or away from the application of DCSS by the US listed Chinese companies during their IPOs. Overall, from 2011 to 2014 the number of those companies with DCSS succeeded that without it; peaking at 2014 before declining fast afterwards (see Figure 2, and Appendix I containing detailed information on IPO dates).

Figure 2: The Number of the US Listed Chinese Companies with and without Dual-Class Share Structure from January 1, 2011 to June 30, 2016



US Listed Chinese Companies with Dual-Class Share Structure
*Figure drawn up by the authors.

Through their US IPOs, the 24 companies with DCSS jointly raised USD $5,585,000,000 in capital, which represented 19.53% of the total IPO funds raised by the 44 US listed Chinese companies.[24] As of June 30, 2016, they possessed a combined market capitalization of approximately USD $78,237,000,000, which was 27.85% of the total market capitalization of the 44 companies.[25]

For industry classifications, Computer & Software contributes the largest proportion of the 24 companies with DCSS, which is employed by 10 companies with a percentage of approximately 42%.[26] This industry is followed by General Retailers and Healthcare Services, which are operated by five companies and two companies respectively; while the other seven companies involve seven different business fields (see Figure 3).

Figure 3: Industry Classifications of the US Listed Chinese Companies with Dual-Class Share Structure from January 1, 2011 to June 30, 2016

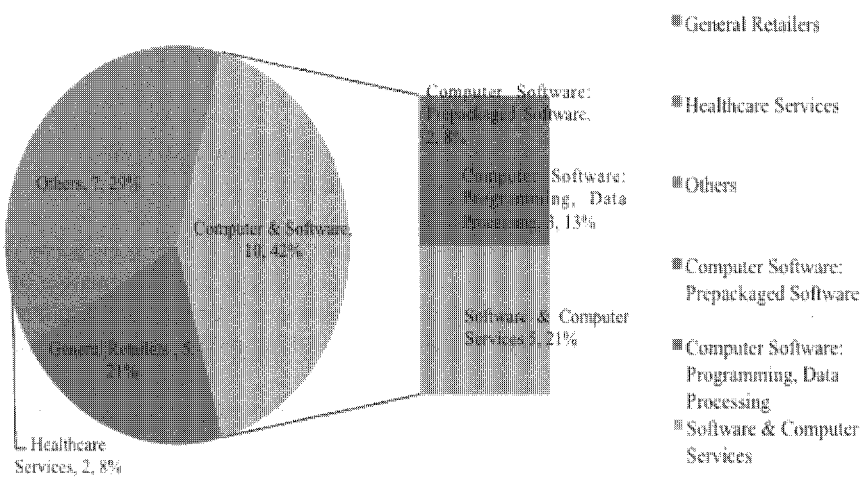


*Figure drawn up by the authors.

[24] The total capital raised by the 44 Chinese companies through their US IPOs was USD $28,592,000,000. *See generally* NASDAQ.com

[25] *See infra* Appendix I. The total market capitalisation of the 44 Chinese companies was USD $280,924,000,000 as of June 30, 2016.

[26] The percentage is calculated by the authors. 10 ÷ 24 = 41.67%.

Other Takeover Defenses in Use by the US Listed Chinese Companies

In addition to DCSS, these US listed Chinese companies also adopt other takeover defensive measures. In this part, these takeover defenses in use will be analyzed.

Conditional Dual-class Share Structure and the Variant of Dual-class Share Structure

One apparent characteristic of DCSS lies in the fact that two classes of shares carry differentiated voting rights. In this strict sense, the company named Autohome Inc. (symbol: ATHM) does not employ DCSS since both its Class A shares and Class B shares are entitled one vote per share.[27] However, its articles of association reverse this status.

According to these articles, where the shareholding of the controlling shareholder falls below 51% but remains above 39.3% regardless of the specific percentage, the Class B shares held by the shareholder as a whole would carry a fixed voting power of 51%.[28] In other words, less than 51% of shareholding represented by Class B shares could carry 51% of voting rights under special conditions.

Furthermore, these articles of association state that where the controller's shareholding is above 39.3%, they are entitled to appoint at least a majority of the directors on the board, as well as, fill the vacancy in case a director he nominated is removed. Moreover, the directors appointed by the controller are not obliged to retire by rotation.[29] These articles jointly result in the effect that special control power is directly entitled to the particular person who holds Class B shares. It is hard to say there is any substantial difference between this mechanism and the rationale of DCSS which indirectly grants the specific person the right to control through weighting his voting power. On this basis, ATHM employs a conditional DCSS.[30]

The pattern of LightIn The Box Co Ltd. (symbol: LITB) is special as well. LITB issues a single class of shares, of which the mode conforms to the OSOV principle at the general meeting of shareholders under most circumstances. However, in case it relates to a change of control of the company, the shares held by the founders are entitled three votes per share.[31] This means that the founders' shares would be converted into multiple voting shares

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[27] *See* Autohome Inc., Articles of Association (Nov. 27, 2013).

[28] *Id.* "If the number of Telstra's shares represents more than or equal to fifty-one percent (51%) of the total issued and outstanding shares, then each Class B ordinary share shall carry the right to one vote. If Telstra's shares represent less than fifty-one percent (51%) but more than or equal to thirty-nine and three-tenths percent (39.3%) of the total issued and outstanding shares, then each Class B ordinary share shall carry such number of votes that would result in Telstra's shares carrying, in the aggregate fifty-one percent (51%) of the total voting rights in the company."

[29] *Id.* "...so long as the Telstra shareholders in the aggregate hold at least fifty-one percent (51%) of voting rights represented by the issued and outstanding voting shares in the company, the Telstra shareholders shall be entitled, but not obligated, to appoint at least a majority of the directors and remove and replace any director so appointed, in each case by depositing a notification of appointment or removal at the registered office of the company...a Telstra director shall not be subject to retirement by rotation and should not be taken into account in determining the number of directors who are to retire by rotation so long as the Telstra shareholders in the aggregate hold at least fifty-one percent (51%) of voting rights represented by the issued and outstanding voting shares in the company."

[30] Autohome, Inc. is calculated into the 24 US listed Chinese companies with DCSS.

[31] *See* LightIn The Box Co Ltd., Articles of Association, (May 23, 2013). "Each holder of our ordinary shares is entitled to one vote per share. However, in matters related to change of control, certain founding shareholders will be entitled to three votes per share."

under such special circumstances. Nevertheless, it is proper to regard this mode as a variant of DCSS rather than a conditional DCSS as there is a single class of shares after all.[32]

Staggered Board

Another takeover defense commonly used by the US listed Chinese companies is staggered board. From 2011, five out of the forty-four US listed Chinese companies[33] have applied such defenses in their articles of associations, taking up a percentage of over 10%; and all these five companies were listed on NASDAQ in 2015. Moreover, one company, Acorn International Inc. (symbol: ATV), proposed to adopt a staggered board according to its prospectus but employed a single class of directors eventually. Furthermore, none of the US listed Chinese companies adopt DCSS and staggered boards simultaneously, although they do not conflict.

Take Pacific Special Acquisition Corp. (symbol: PAAC) as a representative to reveal the functionality of staggered board, PAAC divides its five directors into two classes with three directors in Class A and two directors in Class B. Where the directors of Class A face replacement and election at the general meeting of shareholders in 2016, Class B directors can stay on the board until the following general meeting of shareholders in 2017. In 2017, Class B directors will be re-elected wholly while Class A directors stay unchanged until the 2018 annual general meeting of shareholders. In other words, Class A and Class B retire alternatively by rotation rather than simultaneously. Correspondingly, the term of office is two years. It should be noted that where there are three classes of directors, the term of office would be three years as employed by the other four companies with staggered board structures. It means that under this mode the amount of classes equals the directors' term of office. Special attention should be paid to the stipulation of Wowo Ltd (symbol: JMU), which sets a sunset clause of the rotational election of different classes. Pursuant to its articles of association,[34] after each class of the directors experiencing election, the method of rotational election will expire. Instead, one third of the directors (or, if their number is not a multiple of three, the number nearest to but not greater than one third) will retire from office and stand for election at annual general meeting of shareholders. It means that an unfixed scope of directors will retire annually regardless of which class they are from; and accordingly, the term of office is not fixed.

The mechanism of staggered board could make a target company less attractive rather than frustrating a hostile takeover fundamentally. It accounts for the fact that although over one tenth of the forty-four US listed Chinese companies adopt this defense, these five companies[35] jointly took up 0.26% of the total market capitalization of the forty-four Chinese companies; and thus it is not a leading takeover defense.

Exclusive Directors Nomination Right — Alibaba Partnership

BABA employs a unique mode of takeover defense among the forty-four companies, namely, Alibaba Partnership.[36] Pursuant to its articles of association, BABA applies a

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[32] LITB is not counted into the 24 US listed Chinese companies with DCSS.

[33] *See infra* Appendix III.

[34] *See* Wowo Ltd, Articles of Association, (Jan. 9, 2015).

[35] The combined market capitalisation of the 5 companies was USD $727,000,000. *See generally* NASDAQ.com.

[36] All of the stipulations relating to BABA discussed in Part 2.23. *See* Alibaba Partnership, Annual Report (Form 10-K) (May 24, 2016).

mechanism of partnership, which consists of thirty-four partners who conduct their rights on the one partner, one vote basis. This partnership enjoys two special rights: one is the exclusive right to nominate directors, while the other relates to the allocation of bonus.

According to the articles, even though the director nominees should be appointed at the general meeting of shareholders, in case these nominees are denied by the general meeting of shareholders or leave the board after election regardless of the reason, Alibaba Partnership enjoys the right to appoint an interim director who serves until the following annual general meeting of shareholders. There is no limitation of such an appointment in terms of frequency, which means that as long as the nominees chosen by Alibaba Partnership are not elected by the general meeting of shareholders, this Partnership could appoint interim directors constantly. Such a stipulation results in an effect that Alibaba Partnership has the actual power to nominate directors, even though in the name of nominees or interim directors. Furthermore, pursuant to the articles, whenever the directors nominated (including the interim directors appointed) by Alibaba Partnership take up less than a majority of the total directors on board, Alibaba Partnership is empowered to appoint additional directors to the board at its sole discretion without any additional shareholder approval to ensure that the directors nominated or appointed by Alibaba Partnership could comprise a simple majority of the board. According to BABA's latest annual report, there are eleven directors on the board currently, of which five are Alibaba Partnership nominees. Consequently, this Partnership is entitled to appoint two additional directors to increase its nominees to seven, occupying a simple majority of the thirteen directors in total.

Alibaba Partnership also determines the allocation of corporate bonus. The allocation of bonus, *prima facie*, is decided by the compensation committee according to its articles of association. However, the compensation committee is established by the board of directors. Since Alibaba Partnership controls at least a simple majority of the directors as discussed above, it determines the *de facto* allocation of bonus.

Several other stipulations in the articles of association make Alibaba Partnership unbreakable. Firstly, the election of partners is the own business of this Partnership. The number of partners is dynamic and new partners are elected annually. The election of new partners requires the approval of at least 75% of all the partners without the participation of shareholders. Secondly, Alibaba Partnership's nomination rights and related provisions of the articles of association cannot be changed unless upon 95% of voting rights. Due to the agreement between Alibaba Partnership and the largest two shareholders of BABA named Softbank and Yahoo which hold 32% and 15.4% of shares respectively,[37] as well as the fact that the co-founders Jack Ma and Joseph C. Tsai jointly hold 11% of the total shares, it is impossible for outsiders to collect 95% of voting rights to abolish this Partnership *per se* as well as its exclusive directors nomination right. Lastly, there is a bottom clause that where any change of control, merger or sale of BABA, Alibaba Partnership should not be transferred or otherwise delegated or given a proxy to any third-party with respect to the right to nominate directors.

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[37] *See id.* The agreement is written as follows: "Softbank will vote its shares in favor of the nominees of Alibaba Partnership to be directors at each general meeting of shareholder as long as its shareholding is above 15% in exchange for the right to nominate one director of its own, who will be supported fully by Jack Ma and Joseph C. TSAI. Yahoo will conduct its voting rights to support the nominees of Alibaba Partnership to be directors at the general meeting of shareholder in exchange for its cooperation with BABA in the field of intellectual property."

In essence, the core of Alibaba Partnership is exclusive directors' nomination right as long as the partners as a group hold no less than 5% of the outstanding shares. Compared to staggered board and DCSS, which aim at resisting hostile takeovers to keep the control of a company, Alibaba Partnership is more effective in ensuring that the control of the company is held by the insiders even if a tender offer is successful, even though such success is practically impossible. Since this mechanism is new to the stock exchanges, it is difficult to conclude whether Alibaba Partnership will be imitated by other companies. However, it is of little doubt that the mode of BABA is extremely effective in keeping the control of a company.

Taking the analyses above into consideration, 26 out of the 44 companies employ weighted voting rights, comprising 24 companies with DCSS, LITB's variant of DCSS and BABA's mode of exclusive directors nomination right. The other 18 companies follow the OSOV principle and among them 5 use a staggered board as a takeover defensive measure (see Figure 4). Due to BABA's super business scale, with raised funds of USD $21,767,000,000 and its current market capitalization of USD $198,449,000,000, the 26 companies with weighted voting rights take overwhelming dominance over the 18 companies with the OSOV principle in terms of raised funds and market capitalization (see Figures 5 and 6). Even when making comparisons between the 24 companies with DCSS in the strict sense (without BABA and LITB being considered) and the 18 companies with the OSOV principle (Including the 5 companies with staggered board), the former overwhelms the latter by USD $5,575,000,000 to $1,057,000,000 and $78,237,000,000 to $3,278,000,000 in terms of raised funds and market capitalization respectively. The average raised funds and market capitalization of the former is USD $232,000,000 and $3,260,000,000 while the latter is USD $59,000,000 and $182,000,000. On these grounds, it could be seen that the mode of weighted voting rights, particularly DCSS, takes a dominant position in the 44 US listed Chinese companies.

Figure 4: The Components of the 44 US Listed Chinese Companies by Number and Percentage

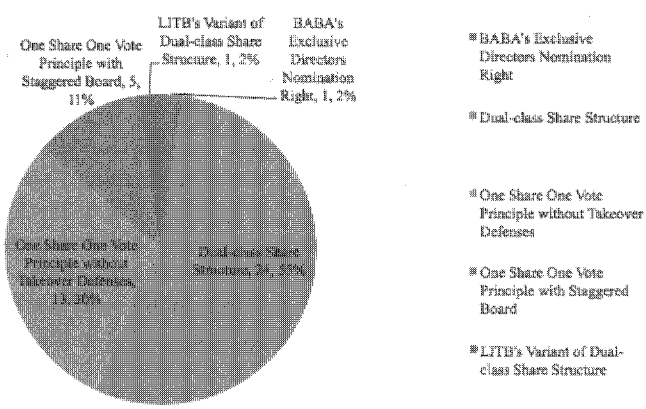

*Figure drawn up by the authors.

Figure 5: Funds Raised by the 44 Companies

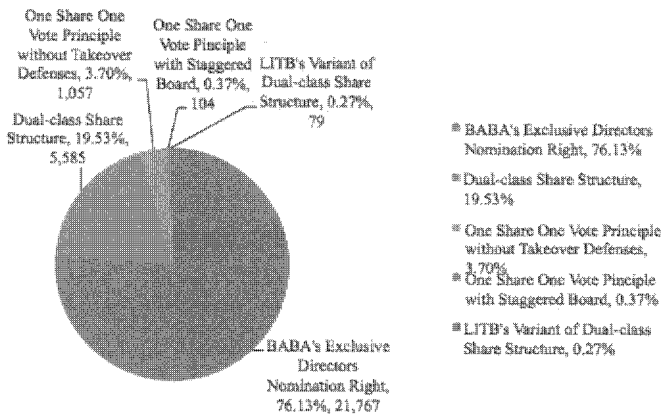

*Figure drawn up by the authors.

Figure 6: Market Capitalization of the 44 Companies

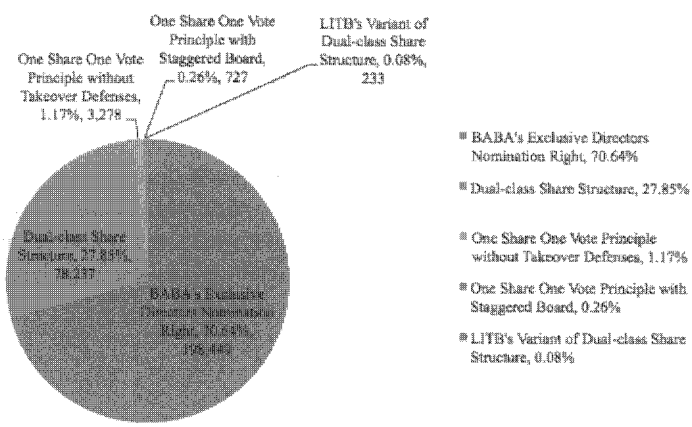

*Figure drawn up by the authors.

III. THE FUNCTIONING AND CORPORATE PERFORMANCE OF THE US LISTED CHINESE COMPANIES WITH DUAL-CLASS SHARE STRUCTURE

The majority of the 24 companies with DCSS in the strict sense issue Class A shares as ordinary listed shares with one vote per share, and Class B shares as unlisted shares with weighted voting rights held by insiders. The only exception is Qunar Cayman Islands Ltd (symbol: QUNR),[38] which entitles its Class A shares as unlisted shares with 3 votes each share, while Class B shares carry one vote per share.[39] Both NYSE and NASDAQ have no limit for the maximum votes that each weighted voting share could represent. JD.com Inc. (symbol: JD) entitles 20 voting rights to each Class B share, which is the largest among the 24 companies. In contrast, Phoenix New Media Ltd (symbol: FENG) empowers only 1.3 voting rights to each Class B share. Furthermore, 16 of these 24 companies employ a mode of entitling 10 votes to each of their Class B shares. Moreover, ATHM's Class B shares carry one vote per share under most circumstances as discussed above (see Figure 7).

Figure 7: Weighted Voting Rights

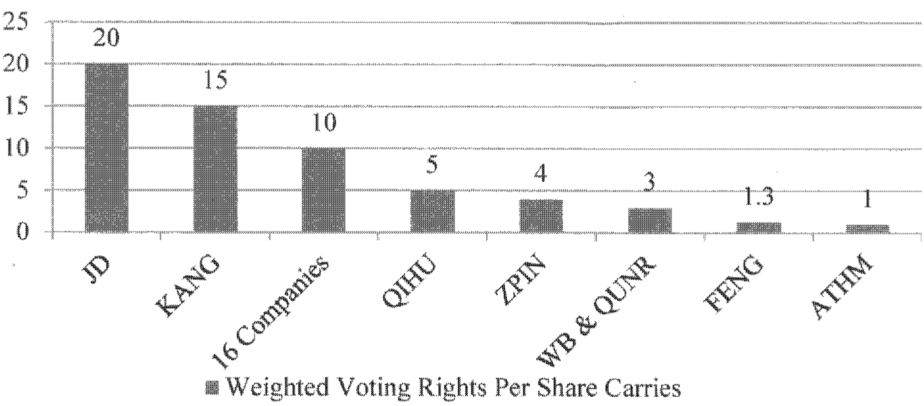

*Figure drawn up by the authors.

Next, 18 of the 22 companies[40] empower their Class B shares to carry more than 50% of the total voting rights, while the other 4 companies entitle their multiple voting shares to represent less than 50% of voting power (see Figure 8). Of which, the largest voting power that Class B shares carry as a whole is 96.6% in CMCM, while the smallest is QUNR at 4.9%.[41]

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[38] Another US listed Chinese company named Perfect World Co Ltd (symbol: PWRD) also chose Class A shares as weighted voting shares with 10 votes per share. However, PWRD had been delisted, and thus QUNR is the only company with Class A shares as weighted voting shares currently.

[39] *See infra* Appendix II for detailed information on the voting rights.

[40] Two companies, i.e. COE and TEDU are excluded from the 24 companies with DCSS since COE was listed on June 10, 2016, and there is no relevant data yet; the data disclosed by TEDU is self-contradictory, thus it cannot be used.

[41] *See infra* Appendix II.

Figure 8: The Total Voting Power that Class B Shares Carry by Percentage

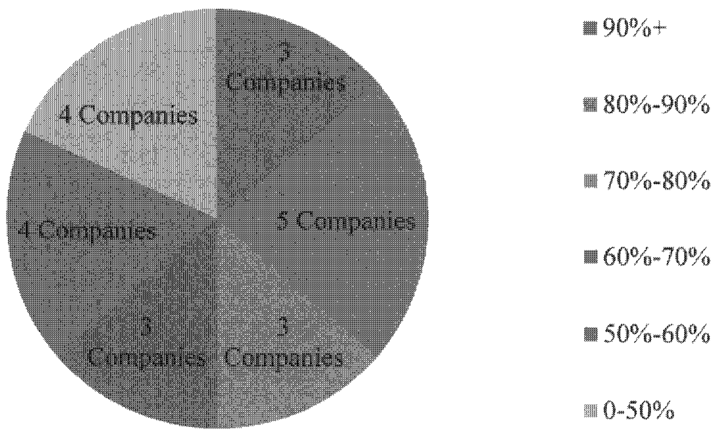

*Figure drawn up by the authors.

Among the 22 companies, the insiders[42] of 8 companies own over 50% of equity and voting power, and the insiders of 9 companies acquire a simple majority of voting rights through holding less than 50% of equity[43] (see Figure 9), which typically reveal the function of DCSS. Take JD as a representative, as of 29 February 2016 there were 2,767,893,260 ordinary outstanding shares, comprising 2,291,244,137 Class A shares on the one vote per share basis and 476,649,123 Class B shares with each of them carrying 20 votes. Class B shares are exclusively owned by two principle shareholders, Max Smart Ltd and Fortune Rising Holdings Ltd which are both held by Richard Liu, the founder of JD. Moreover, Max Smart Ltd holds 27,937,566 Class A shares. As a result, Richard Liu takes charge of 80.9% of voting power through holding 18.2% of equity.[44]

Even though the insiders of 4 companies (symbols: WBAI, BZUN, TOUR and KANG) do not control over 50% voting rights through holding Class B shares, such shares increase their voting power greatly and facilitate them to control the companies (see Figure 9). For example, the insider of BZUN holds 8.9% of equity in terms of Class B shares, which entitle him with 49.6% of voting power. In order to get a simple majority voting force, the insider could purchase dispersed Class A shares on the market, which becomes relatively easy. The only exception is QUNR. Unlike the other 21 companies, the Class B shares of which change the structure of voting power greatly, the multiple voting Class A shares of QUNR carry only 4.9% of the total voting rights.

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[42] The insiders are defined as those who hold unlisted multiple voting shares.

[43] *See infra* Appendix II.

[44] The calculation is as follows: the total voting rights = 476,649,123 × 20 + 2,291,244,137 = 11,824,226,597. Richard Liu's shareholding = (476,649,123 + 27,937,566) ÷ 2,767,893,260 = 18.2%. Richard Liu's voting power = (27,937,566 + 476,649,123 × 20) ÷ 11,824,226,597 = 80.9%.

Figure 9: The Insiders' Shareholding and Voting Power of the 22 Companies with Dual-Class Share Structure

Company	Shareholding (%)	Voting Power (%)	Company	Shareholding (%)	Voting Power (%)
EHIC	59.1	94.8	**JMEI**	40.1	87.0
ZPIN	78.1	93.4	**WUBA**	41	67.0
CMCM	71.6	87.9	**VIPS**	14.1	62.1
ATHM	54.6	54.6	**NQ**	10.5	53.9
FENG	55.6	62.0	**QIHU**	23.7	58.4
RENN	70.5	92.0	**MOMO**	25.2	77.1
DSKY	64.3	82.4	**JD**	18.2	80.9
WB	54.5	78.3	**VNET**	21.5	60.0
			YY	34.9	83.6
WBAI	21.6	46.5			
BZUN	8.9	49.6			
TOUR	6.7	34.0			
KANG	4.0	28.1			
QUNR	1.7	4.9			

*Figure drawn up by the authors.

The 44 US listed Chinese companies have different corporate performance in terms of share price.[45] With regard to the 24 companies with DCSS in the strict sense, 11 out of the 24 companies experienced an underperformance with the last sale below IPO price, while the other 13 were opposite. In respect of the 13 companies employing the OSOV principle without takeover defenses, 10 had the last sale lower than IPO price, while such poor performance was displayed by one of the 5 companies employing the OSOV principle with staggered board. Moreover, BABA's share price succeeded its IPO price while for LITB it did not (see Figure 10).

[45] *See infra* Appendix I for detailed data of IPO price and last sale.

Figure 10: The Corporate Performance of the 44 US Listed Chinese Companies from January 1, 2011 to June 30, 2016 in terms of Share Price

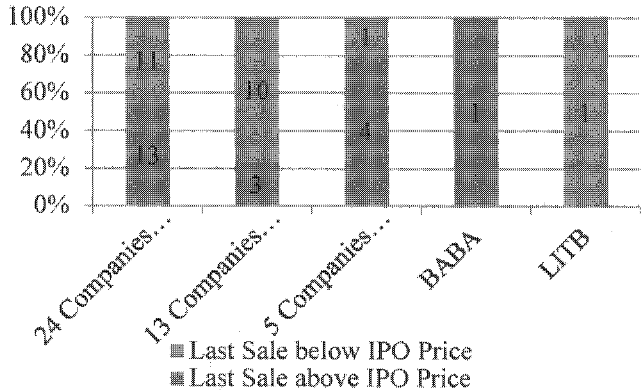

*Figure drawn up by the authors.

In the sense of making profit, the overall performance of the 26 companies, with weighted voting rights including the 24 companies with DCSS, BABA and LITB, is much better than the 18 companies with the OSOV principle.

Among the 24 companies with DCSS, the 13 companies experiencing outperformance have a combined market capitalization of approximately USD \$69,810,000,000, while for the 11 companies with the last sale below the IPO price, have a combined market capitalization of approximately USD \$8,427,000,000. Accordingly, the 13 companies dominate the 24 companies with DCSS in terms of market capitalization rather than number.

Based on the analyses above, it could be concluded that takeover defenses enjoy a great popularity among the recent US listed Chinese companies. These companies with DCSS overwhelm those companies with the OSOV principle wholly in terms of numbers, raised funds and market capitalization. Moreover, the former gains a much better corporate performance in terms of stock return than the latter. Therefore, the application of DCSS is beneficial from a practical point of view.

IV. The Framework of Limited Application of Dual-Class Share Structure in China

The former parts revealed that DCSS is necessary as a solution to the boom of hostile takeover in China. Moreover, the US listed Chinese companies with DCSS give out an overall satisfying corporate performance. Therefore, the adoption of DCSS in China may lead to a similar success. However, the weaknesses of this takeover defense should not be neglected, in particular, the potential risks to small shareholders. On these grounds, the crucial issue lies in seeking a balance between the adoption of DCSS and its potential risks. In this part, the Chinese framework of limited application will be suggested with the purpose of utilizing the function of DCSS as a hostile takeover defense, while safeguarding the interests of companies and public shareholders to smooth its application.

The Applicable Mode of Dual-class Share Structure in China

The Scope of Application

Figure 3 reveals that 15 out of the 24 US listed Chinese companies with DCSS employ corporate businesses under the industry classification of either Computer & Software or General Retailers, jointly taking up 62.5%. In this sense, it seems plausible to restrict the application of DCSS to specific industries, i.e. Computer & Software and General Retailers, as they are leading forces in terms of numbers. However, in consideration of IPO raised funds and market capitalization, these 15 companies account for 52.2% and 55.2% of the 24 companies separately,[46] which are both lower than that percentage counted by number. Moreover, 8 out of the 15 companies had outperformance in terms of share price,[47] taking up a percentage of 53.3%. However, when calculating the 24 companies as a whole, 13 companies of which have a last sale above the IPO price with a percentage of 54.2%.[48] This means that these companies involving Computer & Software or General Retailers did not achieve better corporate performance than the average level. Therefore, it is not convincing to permit merely companies involving Computer & Software or General Retailers to employ DCSS. Furthermore, such a restriction may result in the problem of categorization, i.e. how to sort companies in the light of industry classification[49]. On these grounds, industry classification could not be a feasible restriction on the application of DCSS.

Furthermore, NYSE and NASDAQ only permit new applicants to list with the issuance of dual-class shares, which means that existing listed companies are prohibited from converting into this share structure.[50] These stipulations are written under the consideration that during the IPO stage of a company, there are no public investors whose rights will be reduced by the issuance of multiple voting shares. The investors join a company via subscription, and it is their own choice, with full knowledge, to conduct the investment of purchasing shares with inferior voting rights. However, if after listing, an existing listed company could improve the voting power of specific persons through converting their single voting shares into multiple voting shares, it is extremely unfair to the other shareholders whose voting power will be reduced substantially. Therefore, where DCSS is adopted in China, the existing listed companies should be excluded from the application in order to treat the interests of all shareholders equally.

It should be noted that the existing listed companies may try to circumvent this limitation discussed above. The circumvention may be carried out through setting up a new company and listing it with DCSS, then merging the present company into the new company; or even through delisting the present company via going-private transactions and to relist it

[46] *See infra* Appendix I.

[47] *See infra* Appendix I.

[48] *See infra* Appendix I.

[49] Concept Paper, *Weighted Voting Rights*, Hong Kong Exchanges and Clearing Ltd. (Aug. 2014), at 49 http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2014082.pdf.

[50] It should be highlighted that VIPS initially issued a single class of shares at its IPO stage on NYSE in 2012, but it conducted recapitalisation to transfer to DCSS in 2014. *See* VIPS, Report of Foreign Private Issuer (Form 6-K) (Sept. 16, 2014). Such practice seems to be inexplicable since it is expressly contrary to the NYSE listing rules. The only possible explanation is that NYSE sometimes permits listed companies to break through the restrictions stipulated in its listing rules just as the fact that Ford employed DCSS in the 1950s during its IPO stage on NYSE even though the OSOV restriction was clearly in use.

afterwards with DCSS.[51] Thus, CSRC should make strict regulation to prevent circumvention risks from occurring since it is responsible for checking and ratifying the listing of companies in China.

The Maximum Votes and the Unit of Shares

Figure 7 shows that 16 out of the 24 US listed Chinese companies with DCSS entitle 10 votes to each of their Class B shares, including 9 out of 11 listed on NYSE and 7 out of 13 listed on NASDAQ. In this sense, the ratio of one to ten is a leading mode. Moreover, the ceiling of 10 votes has jurisdictional supports. The restriction of maximum votes is clearly written in Swedish law,[52] while Japan employs a mode of the unit stock system, which entitles one unit to be formed by either 100 Class A shares or 10 Class B shares,[53] results in an actual outcome of the ratio are one to ten. Even though there is no theoretical footing regarding the maximum votes each multiple voting share could carry, a ceiling of 10 votes may be an appropriate choice for China since it could avoid over-diverse application of DCSS.

Rather than directly issuing dual-class shares with different voting rights, the Japanese stock unit mode could be transplanted by China to employ DCSS without annulling the present OSOV doctrine. In the light of the Chinese stock market, a stock transaction is conducted in terms of round lot, where one round lot comprises of 100 shares. Therefore, the Chinese mode could be designed as follows: voting power is conducted via stock units on the one unit, one vote basis. One stock unit could be made up of either 10 Class B shares or between 20 and 100 Class A shares in multiples of ten. Fractional stock unit is not counted in terms of voting rights but enjoys corporate dividends.

Internal Balancing and Legal Remedies

In case of the application of DCSS, the voting power of a company would be concentrated, which means that the election of directors is mainly decided by controllers. Under such a circumstance, how to avoid management entrenchment is the core issue to be solved, and internal balancing as well as legal remedies may be feasible solutions. With regard to legal remedies, it should be noted that relevant provisions similar to the US-based class action and derivative action have already been stipulated in China's company law;[54] therefore, the focus of this part is the establishment of internal balancing.

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[51] *Weighted Voting Rights*, *supra* note 49, at ¶ 151.

[52] Aktiebolagslagen [Companies Act], ch. 4 § 5 [SFS] 2005:552 (Swed.). "No share could carry voting rights which are more than ten times greater than the voting rights of any other share."

[53] Japan created a unit stock system in 2011 to reconcile the clash between the legislative OSOV principle and DCSS. In the light of the unit stock system, although per Class A share and per Class B share is equivalent in terms of voting right and dividend, they contribute different fractions to one stock unit. For example, according to the articles of association of Cyberdyne, one stock unit could be made up of 100 Class A shares or 10 Class B shares. Since each stock unit carries one vote regardless of its component, such system results in an outcome that when shareholders own the same amount of shares, a Class B shareholder is entitled to ten times as many voting rights as a shareholder with Class A shares actually. *See* Koji Toshima, *Cyberdyne's dual-class IPO*, 33 INT'L FIN. L. REV. 43 (2014-2015).

[54] CLOC 2014, art. 151. "Where the directors or senior executives violate the fiduciary duty, any shareholder individually or shareholders collectively as a group own over 1% of shareholding for consecutive 180 days could request the board of supervisors to launch a lawsuit in written from…In case this request is rejected by the board of supervisors or is not implemented within thirty days or is initiated under emergency so that any delay may result in irreparable corporate loss, the aforesaid shareholders could launch a lawsuit directly in their own names

The employment of independent directors is a solution to managerial misconducts, and may be applicable to companies with DCSS.[55] Independent directors of listed companies with DCSS should be elected and appointed at the general meeting of shareholders. However, a restriction should be set that only Class A shareholders are entitled to elect independent directors, who may serve as the representatives of Class A shareholders to voice their opinions at board meetings. Furthermore, there should be a minimum percentage of independent shareholders occupy the board. More importantly, whenever a transaction is conducted between a company and its shareholders who nominated directors, these directors should be excluded from voting in order to safeguard the interests of the other shareholders and the company.

It is generally accepted that control *per se* is valuable,[56] and this value is estimated to be an average 14% of the stock value according to a statistical analysis.[57] Compared with a company with the OSOV principle, an insider of a company with DCSS could get the same level of control via smaller equity. Therefore, where all the other factors are excluded, superior voting shares are more valuable than inferior voting shares. Consequently, it is a universal practice that inferior voting shares of companies with DCSS are traded at a lower price than single-class shares.[58]

Currently, the 24 US listed Chinese companies employ a common model that each outstanding share enjoys equal dividend as well as the same issuing price regardless of the voting power it carries. In other words, the only difference between superior voting share and inferior voting share is voting power. Such a mode is relatively unacceptable in China which emphasizes visible justice. Instead, a mode of either entitling different classes of shares with equal dividends but issuing inferior voting shares at a discounted IPO price or issuing all shares at equal IPO price, however, empowering inferior voting shares with higher dividends is more practical in China. Such a design could be supported by the practice in the US. According to an empirical analysis that sampled 70 American listed companies with DCSS during 1962-1986, 46 companies entitled superior dividends to their inferior voting shares, and another 2

for the sake of the company." *See* CIVIL PROCEDURE LAW OF PEOPLE'S REPUBLIC OF CHINA 2013, art. 52. "Where different lawsuits relate to the same object of action, the court could integrate these lawsuits into one class action, and the outcome is binding to all the plaintiffs if they approve the integration in advance no matter they attend the trial or not."

[55] Similar restrictions have already been in use in the US that some listed companies employed a mode of entitling Class A shareholders and Class B shareholders to nominate their directors respectively, and the percentage of shareholders that each class of shareholders could nominate was set in the articles of associations in advance. *See* Marcia Millon Cornett & Michael R. Vetsuypens, *Voting rights and shareholder wealth the issuance of limited voting common stock*, 10 MANAGERIAL & DECISION ECON. 175, 178 (1989). *See also* M. Megan Partch, *The creation of a class of limited voting common stock and shareholder wealth*, 18 J. FIN. ECON. 313, 318-319 (1987); Paul A. Gompers, Joy Ishii & Andrew Metrick, *Extreme Governance: An Analysis of Dual-Class Firms in the United States*, 23 R. FIN. STUD. 1051, 1057 (2010).

[56] *Weighted Voting Rights*, *supra* note 49, at ¶ 11. *See also* Mike Burkart & Samuel Lee, *The One Share - One Vote Debate: A Theoretical Perspective* (ECGI – Finance, Working Paper No. 176/2007).

[57] Alexander Dyck & Luigi Zingales, *Private Benefits of Control: An International Comparison*, 59 J. FIN. 573, 573 (2004).

[58] An empirical analysis showed that outstanding shares of dual-class shares companies were priced at a discount of about 18% than their counterparts with single-class shares. *See* Scott B. Smart, Ramabhadran S. Thirumalai & Chad J. Zutter, *What's in a Vote? The Short- and Long-run Impact of Dual-Class Equity on IPO Firm Values*, 45 J. ACCT. & ECON. 94, 100 (2008).

companies set a sunset clause with regard to the preferential dividends that inferior voting shares enjoyed.[59]

Furthermore, in consideration of the Chinese stipulation that 'shares could be issued with a price equal to or over their par value, but not below their par value',[60] where Class B shares are issued at par value, it would leave no space for Class A shares to be issued at a discounted price. Therefore, the latter mode, i.e. Class A shares are issued at IPO price equal to Class B shares but enjoy higher dividends, is more feasible.

The Limitations of Application

DCSS is commonly employed by the US listed Chinese companies with some restrictions on the rights enjoyed by the holders of weighted voting shares. In this part, these restrictions will be reviewed to discuss their implications. Some typical restrictions adopted by American companies with DCSS will also be discussed to enrich comparative analysis.[61]

The most common limitation on the application of DCSS is the restriction on the transfer of multiple voting shares to outsiders. It means that once multiple voting shares are assigned to a person who is not a member of the initial beneficial owners or their affiliated entities, those assigned multiple voting shares must be converted into OSOV shares immediately. All the 24 US listed Chinese companies employ such a restriction, while it is also commonly applied by American companies, e.g. Alphabet (formerly Google), Facebook Inc. and LinkedIn. In consideration of the purpose of adopting DCSS in China, i.e. keeping specific persons on board to maintain their control, it is reasonable to employ a similar restriction on the transfer of Class B shares since the aforesaid purpose will become meaningless without such restriction.

One company (ATHM) requires that in case a change of control event takes place, all its Class B multiple voting shares must be converted into Class A shares without delay. Such a restriction is not found among American companies. In addition, one company (JD) requires that where its founder Richard Liu could not serve as the CEO or attend board meetings any longer due to any physical or mental condition, the conversion of all JD's multiple voting shares into the same amount of Class A shares will be triggered. Similar restrictions are also adopted by American companies, e.g. Alphabet, LinkedIn, Groupon, etc. Even though these two sorts of restrictions are not leading modes by number, they are in consistent with the purpose of keeping specific persons as controllers; therefore, these two restrictions could be transplanted into the Chinese framework.

One company (EHIC) sets a minimum threshold with regard to the issuance of its multiple voting shares, i.e., Class B shares must take up no less than 5% of the total outstanding shares. It means that provided its Class B shares as a whole fall below 5% of the total outstanding shares, all these Class B shares must be converted into Class A shares. LinkedIn sets a similar restriction with a threshold of 10%. Considering the fact that the Class B shares of both EHIC and LinkedIn carry 10 votes per share, the threshold of 5% means the insiders could

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[59] *See* Cornett & Vetsuypens, *supra* note 55, at 178. Also in the practice in the US, inferior voting shareholders were generally entitled preferential dividend (often 10%) in order to smooth the recapitalization of DCSS. *See* Gregg A. Jarrell & Annette B. Poulsen, *Dual-Class Recapitalizations as Antitakeover Mechanisms: The Recent Evidence*, 20 J. FIN. ECON. 129, 136 (1988). *See also* Gompers, Ishii & Metrick, *supra* note 55, at 1057.

[60] CLOC 2014, art. 127.

[61] *See infra* Appendix IV for a detailed summary of the restrictions. All the restrictions discussed in this part are from the articles of associations of these companies filed on SEC.

control approximately 34.5% of voting rights; while this maximum voting power is 52.6% if the threshold is 10%.[62] Therefore, the threshold of 10% could guarantee a simple majority of voting power while the threshold of 5% could not achieve this goal. Even though 34.5% of voting power is significant enough to decide most corporate affairs, in consideration of the purpose of adopting DCSS, the threshold of 10% is more reasonable.

Another common restriction adopted by these US listed Chinese companies is the requirement of minimum equity held by insiders. Indeed, 11 out of the 24 companies with DCSS adopt such a restriction though with different percentages (see Appendix IV). In view of the purpose that multiple voting shares should be held by insiders or their affiliated entities exclusively, this requirement is meaningless in China.

There are some restrictions applied by American companies but are not employed by their Chinese counterparts. Two American companies, Facebook and Groupon adopt a mechanism of voting to exit, which requires that in case sufficient multiple voting shares holders approve the transfer to SCSS, the conversion of all multiple voting shares into single voting shares will take place. Facebook sets its requirement at 50%, while Groupon employs a threshold of 66.6%. In addition, Groupon establishes a sunset clause in its sixth amended certificate of incorporation, which requires all its multiple voting shares to be converted into single voting shares mandatorily in five years. No similar restrictions are employed by the 24 US listed Chinese companies.

The system of voting to exit is the autonomy of corporation in nature. Nevertheless, such autonomy relates to the recapitalization of a company, and thus it is regarded as a significant corporate affair that requires two-thirds special majority of votes held by the shareholders at the general meeting in China. Therefore, it is practical to localize the mechanism of voting to exit via conferring such power to the general meeting of shareholders with a criterion of two-thirds approval.

In respect of the sunset clause, it may be more reasonable not to adopt such a mandatory expiration because there is no practice relating to the application of DCSS in China, and thus the actual outcome of such an application is hard to predict. In case the application is practically beneficial, it is not appropriate to limit it within a fixed duration. On the contrary, if the application of DCSS is problematic, it is proper to abolish it timely rather than after 5 years' adoption. On these grounds, an elastic lifespan of the application of DCSS is more feasible in China. It means that there is no sunset clause; instead, CSRC is responsible for conducting the periodical evaluation of the application of DCSS, e.g. every two years. In case the outcome of evaluation is positive, a company is permitted to prolong the application for another two years; otherwise, a negative outcome means a company must transfer to SCSS.

Based on the discussions above, the framework of limited application of DCSS as a hostile takeover defense in China could be constructed as follows: Any new applicant, regardless of its industry classification, could employ DCSS during its IPO stage with both Class A and Class B shares carrying one vote per share. Voting rights are conducted according to units of shares on the one unit, one vote basis, of which each unit could comprise 10 Class B shares or at least 20 but no more than 100 Class A shares in multiples of ten. Class A shares and

[62] When Class B shares contribute 5% of the total outstanding shares and all these Class B shares are held by the insiders, provided there is only one Class B share and 19 Class A shares, the voting power of Class B shareholder is calculated as follows: $\frac{1\text{ (Class B share)}\times 10\text{ (votes)}}{1\text{ (Class B share)}\times 10\text{ (votes)}+19\text{ (Class A shares)}\times 1\text{ (vote)}} = \frac{1\times 10}{1\times 10+19\times 1} = 34.5\%$. According to a same method of calculation, the threshold of 10% means 52.6% of voting power.

Class B shares are issued at the same price, but Class A shares enjoy higher dividends. In a company with DCSS, Class A shareholders at the general meeting of shareholders enjoy the right to appoint independent directors exclusively. Class B shares should be no less than 10% of the total outstanding shares, and are transferable among insiders or their affiliated entities merely. The retirement of insiders or a change of control event will bring about a mandatory conversion of Class B shares into Class A shares. CSRC is responsible for checking the necessity of the application of DCSS on a case-by-case basis and conducting the periodical evaluation to decide any extension.

V. CONCLUSION

In China, a number of recent amended financial policies and legislation have been facilitating hostile takeovers hugely through providing abundant leverage capital and increasing the difficulty of takeover regulation. Therefore, it is a feasible solution to the boom of hostile takeover via entitling companies to adopt more takeover defenses autonomously, in particular, DCSS.

The Chinese companies with DCSS listed on the US stock exchanges after 2011 have achieved a great success in terms of not only financial scale and raised funds, but also stock return and market capitalization. Such outperformance could provide practical insights that the adoption of DCSS in China may bring about a similar outcome.

However, the potential risks to companies and shareholders which may be symbiotic with the adoption of DCSS should not be ignored. Therefore, the core issue lies in seeking a balance. In case DCSS is adopted, a set of strict restrictions is a feasible way to achieve the balance. Both the US and Japan permit the adoption of DCSS, and their practices provide some useful experience which could be transplanted to China with localization, e.g. the restriction on transfer and the stock unit system. Moreover, CSRC should try its best to avoid misuse of DCSS through undertaking more responsibilities, e.g. periodical assessment.

In conclusion, it is feasible to adopt DCSS as a hostile takeover defense in China; however, the application should be employed with strict restrictions.

Appendix I: US Listed Chinese Companies with Dual-Class Share Structure From 2011[63]

Company & Symbol	Industry	IPO Date	IPO Price ($ USD)	Last Sale ($ USD)	IPO Raised Fund ($ USD Million)	Market Capitalization ($ USD Million)
NYSE						
China Online Education Group (COE)	General Retailers (GR)	6/10/2016	19.00	19.83	46	390
eHi Car Services Ltd. (EHIC)	Travel & Leisure	11/18/2014	12.00	10.11	120	702
Zhaopin Ltd. (ZPIN)	Support Services	6/12/2014	13.50	14.53	76	793
Jumei International (JMEI)	GR	5/16/2014	22.00	4.13	245	606
Cheetah Mobile (CMCM)	Software & Computer Services (SCS)	5/8/2014	14.00	9.5	168	1,353
Autohome Inc. (ATHM)	SCS	12/11/2013	17.00	20.11	133	2,279
500.com (WBAI)	SCS	11/22/2013	13.00	16.62	75	696
58.com Inc. (WUBA)	GR	10/31/2013	17.00	45.89	187	6,497
Vipshop Holdings Ltd. (VIPS)	GR	3/23/2012	6.50	11.17	72	7,461
Phoenix New Media Ltd. (FENG)	Media	5/12/2011	11.00	3.68	140	262
NetQin Mobile Inc. (NQ)	SCS	5/5/2011	11.50	3.7	89	356
Renren Inc. (RENN)	GR	5/4/2011	14.00	1.79	743	609
Qihoo 360 Technology Co (QIHU)	SCS	3/30/2011	14.50	73.05	176	9,456
NASDAQ						
Baozun Inc.	Catalog/Specialty	5/21/2	10.00	6.49	110	317

[63] These 24 companies with DCSS are identified via Prospectus and Annual Reports. Data is as of June 30, 2016 unless specified. *See generally* NASDAQ.com for IPO Date, IPO Price and Last Sale are from DASDAQ; Industry description, IPO Raised Fund and Market Capitalization are from NASDAQ and NYSE jointly.

(BZUN)	Distribution	015				
Momo Inc. (MOMO)	Computer Software: Prepackaged Software (CSPS)	12/11/2014	13.50	10.11	216	1,956
iDreamSky Technology Ltd. (DSKY)	CSPS	8/7/2014	15.00	13.63	116	617
JD.com Inc. (JD)	Other Specialty Stores	5/22/2014	19.00	21.23	1,780	28,482
Tuniu Corporation (TOUR)	Transportation Services	5/9/2014	9.00	8.43	72	802
Weibo Corporation (WB)	Computer Software: Programming, Data Processing (CSPDP)	4/14/2014	17.00	28.41	286	5,820
iKang Healthcare Group, Inc. (KANG)	Medical/Nursing Services	4/9/2014	14.00	18.34	153	1,212
Tarena International, Inc. (TEDU)	Other Consumer Services	4/3/2014	9.00	10.33	138	573
Qunar Cayman Islands Ltd. (QUNR)	CSPDP	11/1/2013	15.00	29.79	167	4,277
YY Inc. (YY)	EDP Services	11/21/2012	10.50	33.87	82	1,874
21 Vianet Group, Inc. (VNET)	CSPDP	4/21/2011	15.00	10.21	195	847

*Figure drawn up by the authors.

Appendix II: Shareholding of the US Listed Chinese Companies with Dual-class Share Structure From 2011[64]

Company	Shares Structure	Principle Shareholders	Shareholding		Total Holding of Equity (%)[65]	Total Holding of Voting Rights (%)[66]
			Class A	Class B		
COE[67]	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: N/A Class A: N/A Class B: N/A Date: N/A	Nan Peng Shen	3,947,368	47,032,920	N/A	N/A
EHIC	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 138,794,713 Class A: 66,605,209 Class B: 72,189,504 Date: 3/31/2016	Ctrip	4,300,000	15,168,193	14.0	19.8
		Crawford	—	18,694,003	13.5	23.7
		Tiger Fund	16,669,726	—	12.0	2.1
		CDH	1,300,000	8,599,211	7.1	11.1
		GS Group	—	9,081,665	6.5	11.5
		Qiming Group	1,310,326	7,673809	6.5	9.9
		Ray Ruiping Zhang	—	8,815432	6.2	10.8
		SRS Funds	8,334,864	—	6.0	1.1
		Ignition Group	1,153,271	6,187,197	5.3	8.0
ZPIN	Class A (listed): 1 vote Class B (unlisted): 4votes Total Shares:108,742,056 Class A: 23,815,513 Class B: 84,926,543 Date: 9/30/2015	SEEK International Investments Pty Ltd	—	68,259,876	62.8	75.1
		Ridgegate Proprietary Ltd	—	16,666,666	15.3	18.3
JMEI	Class A (listed): 1	Super ROI	—	50,892,198	34.7	75.3

64 Share Structure, Insiders' Shareholding, the amount of Class A Shares, Class B shares and total outstanding ordinary shares. *See* SEC, https://www.sec.gov/edgar.shtml. Holding of Equity and Holding of Voting rights are calculated according to the above-mentioned data. Ownership and Insiders' Shareholding is as at date of company's last annual report or IPO prospectus, whichever is later. *Id.*

65 Percentage of equity is calculated by dividing the equity of all Class A and Class B common shares as a whole.

66 Percentage of voting power is calculated by dividing the voting power of all Class A and Class B common shares as a whole.

67 COE was listed on June 10, 2016; no data of its outstanding shares is available currently.

	vote Class B (unlisted): 10 votes Total Shares: 146,634,596 Class A: 87,829,756 Class B: 58,804,840 Date: 3/31/2016	Global Holding Ltd				
		Sequoia funds	20,900,000	—	14.3	3.1
		Xiaoping Xu	8,909,079	—	6.1	1.3
		Pinnacle High-Tech Ltd	—	7,912,642	5.4	11.7
CMCM	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 1,424,588,645 Class A: 369,074,493 Class B: 1,055,514,152 Date: 3/31/2016	Kingsoft Corporation Ltd	11,800,547	662,806,049	47.4	60.8
		Tencent Holdings Ltd	15,031,120	220,481,928	16.5	20.3
		Sheng Global Ltd	38,867,334	70,581,063	7.7	6.8
ATHM	Class A (listed): 1 vote Class B (unlisted): 1 vote per share but carries right to 51% of voting rights if controller holds below 51% but above 39.3% of total equity of the company Total Shares: 113,330,274 Class A: 51,505,946 Class B: 61,824,328 Date: 2/29/2016	Telstra Holdings Pty Ltd	—	61,824,328	54.6	54.6
WBAI	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 413,790,561 Class A: 339,390,262 Class B: 74,400,299 Date: 3/31/2016	Tsinghua Unigroup International Co Ltd	67,571,750	—	16.3	6.2
		Sequoia Capital 2010 CGF Holdco, Ltd	35,042,730	5	8.5	3.2
		Delite Ltd	3,008,830	26,000,006	7.0	24.3
		Smart Mega Holdings Ltd	5,265,010	20,000,008	6.1	19.0
WUBA	Class A (listed): 1 vote Class B (unlisted): 10	Tencent Holdings Ltd	50,127,494	14,722,000	22.9	23.2
		Nihao China	831,436	28,587,204	10.4	33.6

	votes Total Shares: 283,157,733 Class A: 219,902,820 Class B: 63,254,913 Date: 2/29/2016	Corporation				
		Mark Haoyong Yang	14,457,571	7,214,653	7.7	10.2
		FMR LLC	18,414,210	—	6.5	2.2
VIPS	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 117,074,312 Class A: 100,563,954 Class B: 16,510,358 Date: 3/31/2016	Elegant Motion Holdings Ltd	—	16,510,358	14.1	62.1
		Tiger Entities	9,900,000	—	8.5	3.7
		High Vivacity Holdings Ltd	8,952,810	—	7.6	3.4
FENG	Class A (listed): 1 vote Class B (unlisted): 1.3 votes Total Shares: 570,651,462 Class A: 253,326,102 Class B: 317,325,360 Date: 3/31/2016	Phoenix Satellite Television (B.V.I.) Holding Ltd	—	317,325,360	55.6	62.0
		Shuang Liu	13,651,000	—	2.4	2.1
NQ	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 480,857,012 Class A: 430,504,041 Class B: 50,352,971 Date: 3/15/2016	RPL Holdings Ltd	—	50,352,941	10.5	53.9
RENN	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 1,020,682,149 Class A: 715,293,699 Class B: 305,388,450 Date: 2/29/2016	SB Pan Pacific Corporation and affiliate	270,258,971	135,129,480	39.7	43.0
		Joseph Chen	144,093,852	170,258,970	30.8	49.0
		DCM and affiliates	87,929,871	—	8.6	2.3
QIHU	Class A (listed): 1 vote	Global Village Associates Ltd	1837288.5	29,340,466	16.1	41.1

	Class B (unlisted): 5 votes Total Shares: 194,160,406 Class A: 152,342,057 Class B: 41,818,349 Date: 2/29/2016	Young Vision Group Ltd	2790780	11,923,346	7.6	17.3
BZUN	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 148,527,064 Class A: 135,226,326 Class B: 13,300,738 Date: 3/31/2016	Alibaba Investment Ltd	26,469,422	—	17.8	9.9
		Crescent Castle Holdings Ltd	26,091,863	—	17.6	9.7
		Tsubasa Corporation	20,029,611	—	13.5	7.5
		Jesvinco Holdings Ltd	4	9,410,369	6.3	35.1
		GS Entities	11,066,989	—	7.5	4.1
		Casvendino Holdings Ltd	—	3,890,369	2.6	14.5
MOMO	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 384,253,289 Class A: 287,366,919 Class B: 96,886,370 Date: 3/31/2016	Gallant Future Holdings Ltd	—	96,886,370	25.2	77.1
		Alibaba Investment Ltd	77,749,140	—	20.2	6.2
		Matrix Partners China II Hong Kong Ltd	65,970,897	—	17.2	5.3
DSKY	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 181,218,545 Class A: 99,772,425 Class B: 81,446,120 Date: 4/18/2016	THL A19 Ltd	21,520,490	17,520,490	21.5	21.5
		Dream Data Services Ltd	—	28,873,610	15.9	31.6
		LC Fund entities	13,444,610	13,444,610	14.8	16.2
		Redpoint entities	10,923,550	10,923,550	12.1	13.1
JD	Class A (listed): 1 vote Class B (unlisted): 20 votes Total Shares: 2,767,893,260 Class A: 2,291,244,137 Class B: 476,649,123	Huang River Investment Ltd	498,850,435	—	18.0	4.2
		Max Smart Ltd	27,937,566	421,507,423	16.2	71.5
		Hillhouse Capital Management Ltd	245,217,184	—	8.9	2.1
		Fortune Rising Holdings Ltd	—	55,141,700	2.0	9.3

	Date: 2/29/2016					
TOUR	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 378,089,251 Class A: 360,715,751 Class B: 17,373,500 Date: 3/31/2016	BHR Winwood Investment Management Ltd	90,909,091	—	24.0	17
		Affiliates of JD.com, Inc.	78,061,780	—	20.7	14.6
		DCM V, L.P. and Affiliates	34,829,512	—	9.2	6.5
		Unicorn Riches Ltd	27,436,780	—	7.3	5.1
		Dragon Rabbit Capital Ltd.	4,104,137	10,423,503	3.8	20.3
		Verne Capital Ltd	4,104,137	6,949,997	2.9	13.7
WB	Class A (listed): 1 vote Class B (unlisted): 3 votes Total Shares: 212,725,454 Class A: 96,716,232 Class B: 116,009,222 Date: 3/31/2016	Sina Corporation	—	116,009,222	54.5	78.3
		Ali WB Investment Holding Ltd	64,883,086	—	30.5	14.6
KANG	Class A (listed): 1 vote Class B (unlisted): 15 votes[68] Total Shares: 33,632,240 Class A: 32,827,140 Class B: 805,100 Date: 6/30/2015	Top Fortune Win Ltd	4,448,575	—	13.2	9.9
		ShanghaiMed, Inc.	3,042,550	—	9.0	6.8
		Ora Investment Pte Ltd	2,003,366	—	6.0	4.5
		Time Intelligent Finance Ltd	526,721	805,100	4.0	28.1
TEDU[69]	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 55,718,419 Class A: 45,143,523	KKR funds	16,598,480	7,206,059	42.7	58.5
		Learningon Ltd	500,000	6,060,000	11.8	40.5
		Goldman Sachs funds	5,457,426	—	9.8	3.6
		Connion Capital Ltd	4,413,288	—	7.9	2.9
		Techedu Ltd	2,439,014	1,146,059	6.4	9.2

[68] KANG issued Class C shares as unlisted shares with multiple voting rights; in this form, the author use Class B in order to keep uniform.

[69] *See* Tarena Technology Group Ltd., ANNUAL REPORTS, http://ir.tarena.com.cn/phoenix.zhtml?c=253008&p=irol-reportsannual (last visited May 21, 2017). According to the annual report of TEDU filed on April 20, 2016, the total issued Class B shares as of March 31, 2016 was 10,574,896. However, the same filing states that the principle shareholders held a combined amount of Class B shares of 17,780,955. Therefore, the data disclosed by TEDU is self-contradict and inaccurate.

	Class B: 10,574,896 Date: 3/31/3016	IDG funds	—	3,368,837	6.0	22.3
QUNR	Class A (unlisted): 3 vote Class B (listed): 1 votes Total Shares: 434,347,172 Class A: 7,345,925 Class B: 427,001,247 Date: 3/31/3016	Ctrip.com International, Ltd	—	190,152,519	43.8	42.3
		M Strat Holdings GP, Ltd	—	85,748,724	19.7	19.1
		Viking Global Investors LP	—	25,568,241	5.9	5.7
		Momentum Strategic Holdings GP, Ltd	—	24,621,642	5.7	5.5
YY	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 1,098,859,244 Class A: 729,301,268 Class B: 369,557,976 Date: 3/31/3016	Top Brand Holdings Ltd	—	192,741,483	17.5	43.6
		YYME Ltd	16,000,000	175,241,483	17.4	40.0
VNET	Class A (listed): 1 vote Class B (unlisted): 10 votes Total Shares: 524,207,918 Class A: 460,611,670 Class B: 63,596,248 Date: 3/31/3016	Fast Horse Technology Ltd	—	19,670,117	3.8	17.9
		Sunrise Corporate Holding Ltd	6,700,000	12,187,875	3.6	11.7
		King Venture Holdings Ltd	39,087,125	18,250,268	10.9	20.2
		Esta Investments Pte Ltd	64,668,024	—	12.3	5.9
		Xiaomi Ventures Ltd	6,142,410	10,524,257	3.2	10.2
		The OZ Funds	29,555,580	—	5.6	2.7

*Figure drawn up by the authors.

Appendix III: US Listed Chinese Companies with Staggered Board Structure from 2011[70]

Company & Symbol	**Industry**	**IPO Date**	**Market Capitalization ($ USD Million)**	**Directors Classes**	**Term of Office & Election**
			NASDAQ		
China Customer Relations Centers, Inc. (CCRC)	Business Services	12/21/2015	200	Class A: 1 Director Class B: 2 Directors Class C: 4 Directors	3 Years The term of office of each class expires alternately, and only one class to be elected each year.
Pacific Special Acquisition Corp (PAAC)	Business Services	10/15/2015	78	Class A: 3 Directors Class B: 2 Directors	2 Years The term of office of each class expires alternately, and only one class to be elected each year.
E-compass Acquisition Corp (ECAC)	Business Services	8/13/2015	54	Class A: 1 Director Class B: 2 Directors Class C: 2 Directors	3 Years The term of office of each class expires alternately, and only one class to be elected each year.
Wowo Ltd (JMU)	EDP Services	4/8/2015	303	Class A: 3 Directors Class B: 2 Directors Class C: 4 Directors	The term of office of each class expires alternately, and only one class to be elected each year. Then, one third of the directors (or, if their number is not a multiple of three, the number nearest to but not greater than one third) will retire from office and stand for election every year at annual general meeting of shareholders.
Tantech	Major	3/24/20	92	5 Directors in	3 Years

[70] Data is as of June 30, 2016 unless specified. *See generally* NASDAQ.com. Industry description and Market Capitalization are from NYSE and NASDAQ jointly; Director Classes, Term of office and Election. *See* SEC, https://www.sec.gov/edgar.shtml.

Holdings Ltd (TANH)	Chemicals	15		total Class A: N/A Class B: N/A Class C: N/A	The term of office of each class expires alternately, and only one class to be elected each year.

*Figure drawn up by the authors.

Appendix IV: Restrictions on Dual-Class Share Structure on the American Stock Exchanges[71]

Characteristic	Description of Restriction	Adoption by Chinese Companies	Examples of Adoption by American Companies
Restriction on the transfer to outsiders	Multiple voting shares must be converted into OSOV shares at the same amount if the holder of multiple voting shares transfer them to any person or entity who is not an affiliate of such holder	All the 24 companies	Alphabet Facebook LinkedIn
Retirement/Incapacity/death of founder	One company (JD) requires the conversion of all its Class B shares into Class A shares in case that the founder retires from the position of CEO or cannot attend board meeting due to physical or mental condition permanently	One of the 24 companies (JD)	Google LinkedIn Groupon
Change of control	One company (ATHM) requires the conversion of all its Class B shares into Class A shares in case of a change of control	One of the 24 companies (ATHM)	None
Vote to exit	A restriction for the conversion of all multiple voting shares into OSOV shares if their holders approve	None	Facebook (the approval of simply majority of multiple voting shareholders) Groupon (the approval of at least 66.6% of multiple voting shareholders)
Threshold of the percentage	One company (EHIC) requires all its Class B shares with multiple voting rights to be converted into Class A shares if the amount of Class B shares falls below 5% of its total equity	One of the 24 companies (EHIC)	LinkedIn (the threshold of conversion is 10%)
Threshold of minimum equity held by insiders	Five companies (JMEI, WUBA, NQ, WB, YY) require that if the co-founders and their affiliates collectively hold less than 5% of the total issued Class B Shares, all Class B shares	11 of the 24 companies (JMEI, ATHM, WUBA, VIPS, NQ, RENN,	AMC Entertainment Holdings, Inc. (30% of all outstanding shares threshold)

[71] *See generally* SEC, https://www.sec.gov/edgar.shtml.

	must be converted into Class A share; ATHM sets this threshold at 39.3%; VIPS sets its threshold in terms of an amount of 5,651,402 Class B shares rather than by percentage; The conversion in JD will be triggered in case its founder does not hold any Class B share; KANG sets its threshold at 8% of the total outstanding shares; RENN requires that if at any time the co-founders and their affiliates collectively hold less than 50% of the issued Class B Shares, their Class B shares rather than all the Class B shares must be converted into Class A share.	JD, WB, KANG, YY)	
Sunset clause	A restriction for the conversion of all multiple voting shares into OSOV shares after a specific term.	None	Groupon (conversion into ordinary shares after 5 years)

*Figure drawn up by the authors.